



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/357,436	01/24/2012	Stuart Bussell	Bus120104	3319

7590  
Stuart Bussell  
7904 Vista Guyaba  
Carlsbad, CA 92009

EXAMINER
----------

HAWK, NOAH CHANDLER

ART UNIT	PAPER NUMBER
----------	--------------

3636

MAIL DATE	DELIVERY MODE
-----------	---------------

12/13/2016

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* STUART BUSSELL and MITCHELL L. BUSSELL

---

Appeal 2014-007478  
Application 13/357,436  
Technology Center 3600

---

Before CHARLES N. GREENHUT, MICHAEL L. HOELTER, and  
LISA M. GUIJT, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1, 7, 9, 11, and 17–20. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

### CLAIMED SUBJECT MATTER

The claims are directed to a compactly collapsible chair canopy.  
Claim 1, reproduced below, with emphasis added, is illustrative of the claimed subject matter:

1. A canopy, adapted for use with a chair having a backrest, comprising:
  - a) a frame comprising two members, namely a closed loop rod and an open arc rod, each made of flexible material, said open arc rod having two ends;
  - b) a first sheet secured throughout its entire perimeter to said closed loop rod, first sheet having a top edge, two sides and a bottom edge;
  - c) a second sheet comprising a top edge and a bottom edge such that:
    - i. the middle of said bottom edge of said second sheet is joined by an attachment to the middle of said top edge of said first sheet, said attachment of said bottom edge of said second sheet to said first sheet includes all of said top edge of said first sheet and extends symmetrically down both said sides of said first sheet towards said bottom edge of said first sheet, and
    - ii. *said top edge of said second sheet completely confines said open arc rod*; and
  - d) one or more anchors configured to attach said canopy to said chair's backrest

### REJECTIONS

Claims 1, 7, 11, and 17–20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Le Gette (US 6,478,038 B1, Nov. 12, 2002)

Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Le Gette.

OPINION

The dispositive issue in this appeal relates to the limitation emphasized above. Appellants argue the presence of connectors 32 in the embodiment depicted in Figures 1–3 of Le Gette and relied upon by the Examiner precludes the open arc rod 34 from being “completely confined” *by the top edge of the recited second sheet*. App. Br. 16–17. The Examiner responds by stating, “[w]hile connectors 32 would naturally b[e] disposed outwardly of the second sheet/open arc rod assembly, they are not considered part of the open arc rod itself, and as such, do not preclude the open arc rod from being completely confined *within* the second sheet.” Ans. 3. (emphasis added). To the extent it is the Examiner’s position, although connectors 32 and sheet 50 may cooperate to completely confine rod 34, the claim attributes the recited confinement to the top edge of the second sheet itself and not to any other structure. Thus, to meet the claim, under the Examiner’s interpretation, sheet 50 would need to completely confine rod 34 as opposed to rod 34 being completely confined, with the help of connectors 32, *within* sheet 50. The Examiner goes on to say that “the connectors *could* receive a fabric-covered end of the rod and a fabric covered length of the loop to pivotally connect the two elements together securely.” Ans. 3. The Examiner proposed one possible way to embody the schematically illustrated rod 34 and connectors 32 of Le Gette, but the arrangement proposed by the Examiner is not one disclosed within the four corners of Le Gette. As such, it cannot be relied upon to establish anticipation. “The identical invention must be shown in as complete detail as is contained in the ... claim.” MPEP § 2131 (quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, (Fed. Cir. 1989)). The Examiner does not account for this shortcoming in the § 103(a) rejection.

Appeal 2014-007478  
Application 13/357,436

DECISION

The Examiner's rejections are reversed.

REVERSED